

Exhibit 2

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 Case No. 1:15-cv-04384 (KBF)

-----x

5 SMART INSURANCE COMPANY,

6 Plaintiff,

7 -against-

8 BENECARD SERVICES, INC.,

9 Defendant.

10 -----x

11 1251 Avenue of the Americas
12 New York, New York
13 July 8, 2016
14 9:30 a.m.

15
16 VIDEOTAPED DEPOSITION of JASON L.
17 RUCHABER, CFA, ASA, taken by the Plaintiff,
18 held at the aforementioned time and place,
19 before Sherri Flagg, a Registered Professional
20 Reporter, Certified LiveNote Reporter, and
21 Notary Public.
22
23
24
25

<p style="text-align: right;">Page 154</p> <p>1 - J. RUCHABER -</p> <p>2 could use post-valuation date information in a</p> <p>3 valuation?</p> <p>4 A. I was not aware of this letter.</p> <p>5 Q. You do agree that that's what the</p> <p>6 letter is, though; it's a critique of what</p> <p>7 the --</p> <p>8 A. It's a clarification.</p> <p>9 Q. If I could finish, please. Well,</p> <p>10 I'll use your word. It's a clarification --</p> <p>11 well, withdrawn.</p> <p>12 In the second paragraph of the</p> <p>13 letter, the ASA says -- three lines down</p> <p>14 starting close to the right, there's a sentence</p> <p>15 that says "Simply stated." Do you see that,</p> <p>16 second paragraph, three lines down?</p> <p>17 A. Yeah.</p> <p>18 Q. I'm going to read it. It says</p> <p>19 (as read):</p> <p>20 Simply stated, in business</p> <p>21 valuation, events subsequent to the</p> <p>22 effective date of the appraisal are not</p> <p>23 to be considered unless they are known or</p> <p>24 knowable.</p> <p>25 That's what they wrote?</p>	<p style="text-align: right;">Page 156</p> <p>1 - J. RUCHABER -</p> <p>2 well.</p> <p>3 Q. What is your understanding of what</p> <p>4 the exception is?</p> <p>5 A. The exception is, to the extent</p> <p>6 that those trends were reasonably foreseeable</p> <p>7 or otherwise known -- should have been known or</p> <p>8 knowable as of the valuation date, it is okay</p> <p>9 to consider them in your appraisal.</p> <p>10 Q. Well, you put a lot of concepts</p> <p>11 out there. You said "reasonably foreseeable."</p> <p>12 A. Um-hmm.</p> <p>13 Q. That's actually the language</p> <p>14 that's used in this letter, right?</p> <p>15 A. Um-hmm.</p> <p>16 Q. Then you said that if it's known</p> <p>17 or should have been known. Is it your</p> <p>18 understanding that if there's information that</p> <p>19 should have been known on the valuation date,</p> <p>20 that that would fall within the exception?</p> <p>21 A. Yes.</p> <p>22 Q. Where does that come from?</p> <p>23 A. Well, I think that's what it says</p> <p>24 here. But, for example, if you have 2006</p> <p>25 through 2013 a market that is declining and in</p>
<p style="text-align: right;">Page 155</p> <p>1 - J. RUCHABER -</p> <p>2 A. Yep.</p> <p>3 Q. And that's pretty much what you</p> <p>4 said.</p> <p>5 A. That's exactly what I said.</p> <p>6 Q. So you agree with that?</p> <p>7 A. I do, and I also have the caveat</p> <p>8 that's in the next paragraph. So I agree with</p> <p>9 everything that's in this and it's consistent</p> <p>10 with what I said.</p> <p>11 Q. Okay. In the next paragraph, it</p> <p>12 says (as read):</p> <p>13 Use of subsequent events to</p> <p>14 confirm trends with one narrow exception</p> <p>15 is not a recognized practice in business</p> <p>16 valuation.</p> <p>17 That's what that sentence says?</p> <p>18 A. Yes.</p> <p>19 Q. Do you agree with that?</p> <p>20 A. Correct.</p> <p>21 Q. And your testimony is that's not</p> <p>22 inconsistent with what you testified to earlier</p> <p>23 about when it was appropriate to use?</p> <p>24 A. Because I use that narrow</p> <p>25 exception. I think I articulated it fairly</p>	<p style="text-align: right;">Page 157</p> <p>1 - J. RUCHABER -</p> <p>2 2014, and you have information that says we</p> <p>3 anticipate 2014 will decline and then, in fact,</p> <p>4 2014 does decline, it would be reasonable for a</p> <p>5 2013 valuation date to say: It should have</p> <p>6 been reasonably foreseeable that the market</p> <p>7 would continue to decline.</p> <p>8 And that's consistent with what</p> <p>9 this says and I think that is consistent with</p> <p>10 what I stated earlier.</p> <p>11 Q. So you have no dispute with what</p> <p>12 the ASA is saying in here?</p> <p>13 A. Well, there's a lot of stuff in</p> <p>14 here.</p> <p>15 Q. I understand that.</p> <p>16 A. But the general concept that we've</p> <p>17 discussed, that you should not use post-</p> <p>18 valuation date information to do your</p> <p>19 valuation, with that narrow exception, that's</p> <p>20 correct.</p> <p>21 Q. I'm going to read one of the</p> <p>22 answers that you gave me. You said -- I read</p> <p>23 you the first sentence and I said (as read):</p> <p>24 And that's pretty much what you</p> <p>25 said.</p>

40 (Pages 154 - 157)

<p style="text-align: right;">Page 158</p> <p>1 - J. RUCHABER - 2 ANSWER: That's exactly what I 3 said. 4 QUESTION: So you agree with that? 5 ANSWER: I do, and I also have the 6 caveat in the next paragraph so I agree 7 with everything that's in this and it's 8 consistent with what I said. 9 A. In the next paragraph. 10 Q. So "in this" you meant the next 11 paragraph? 12 MR. PENDLETON: No. Objection to 13 form. 14 Q. Are you comfortable with your 15 answer to the question that I just read? 16 A. I believe that I am comfortable 17 with the answer that I just -- that you just 18 read. 19 Q. Did you rely on subsequent events 20 in criticizing Mr. Leary's opinion, events 21 subsequent to the valuation date? 22 A. Did I rely -- could you point me 23 to one? 24 Q. Well, you cited sources that were 25 written after 2013 about trends in the industry</p>	<p style="text-align: right;">Page 160</p> <p>1 - J. RUCHABER - 2 BY MR. MEYERHOFF (continuing): 3 Q. Can I just take a look at that and 4 make sure it's the same thing I have? 5 Do you have Ruchaber Exhibit 4 in 6 front of you? 7 A. I do. 8 Q. And you're familiar with this 9 document? 10 A. I am. 11 Q. What is it? 12 A. It is a letter to Smart Insurance 13 Company from Express Scripts discussing the 14 purchase price adjustment. 15 Q. And the letter's dated March 28th, 16 2014? 17 A. Correct. 18 Q. This is the true-up that was done 19 on the Express Scripts deal to adjust the 20 purchase price based on the actual number of 21 members of the Smart plan at year-end, correct? 22 A. Correct. 23 Q. And in your report you criticize 24 the projections that Mr. Leary relied upon that 25 he received from management about enrollment</p>
<p style="text-align: right;">Page 159</p> <p>1 - J. RUCHABER - 2 and used them to criticize Mr. Leary's 3 opinions, correct? 4 A. Correct. 5 Q. Is it your testimony that those 6 critiques are consistent with what the ASA says 7 in this letter that it wrote to the Appraisal 8 Standards Board? 9 A. Yes. 10 Q. Okay. How do you explain that? 11 A. Because those documents, whereas 12 they were written subsequent to the appraisal 13 date, they reference information that was known 14 or knowable for periods prior to the valuation 15 date. In fact, they reference 2010, 2007, 16 multiple years. 17 And, in fact, they're a -- in some 18 cases -- and we can talk about specific 19 documents. But they're a continuation of a 20 discussion around industry trends that a 21 participant would have had absolute knowledge 22 of as of August 31, 2013. 23 (Exhibit 4: Letter 3/28/14 24 (#SMT00887851-854), was marked for 25 identification.)</p>	<p style="text-align: right;">Page 161</p> <p>1 - J. RUCHABER - 2 numbers, right? 3 A. Correct. 4 Q. And don't you use this information 5 to support your opinion that Mr. Leary 6 shouldn't have relied on those projections? 7 A. Yes. 8 Q. How is this not post-transaction 9 information that wasn't known or knowable on 10 the date of the transaction? 11 A. So if you look at the history of 12 projection models that have been put together 13 by management, which Mr. Leary did none, and 14 you look at the consistent fact pattern that 15 they were overestimating what was going to 16 happen with the business, they revised their 17 projections downward on a number of occasions 18 and, in fact, the projection they put together 19 prior to the valuation date which is evidenced 20 here was ultimately proven to be wrong as well. 21 It's a continuation of a fact 22 pattern that shows management was being overly 23 optimistic with their projections, something 24 that should have been known or knowable and 25 investigated by an appraiser.</p>

41 (Pages 158 - 161)

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1 - J. RUCHABER -
2 And, in fact, this is an example
3 of something that the projection that was done
4 on or around the date of the transaction
5 ultimately proved to be overly optimistic as
6 well. So I think it's a continuation of that
7 pattern.
8 Q. Even though there's no way
9 somebody who was considering buying the company
10 in August 2013 would have any way of knowing
11 the actual information that's in here, you're
12 saying that's an appropriate thing to use in
13 valuing a company on that date?
14 MR. PENDLETON: Objection to form.
15 A. So let me --
16 Q. Just my question, please.
17 MR. PENDLETON: He's answering the
18 question. Please allow him to do so.
19 A. Would you read the question back
20 to me, please.
21 (Requested portion read.)
22 A. My answer is no.
23 Q. It's not appropriate to use it in
24 valuing it on that date?
25 A. That number.

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1 - J. RUCHABER -
2 Q. What number?
3 A. The actual number of members.
4 Nobody could have known that. But the trend,
5 which is what I'm speaking to and what I use as
6 a support for, is there's a history of overly
7 optimistic projections. And that's played out
8 during the entire time that Smart was in
9 business.
10 So it is incumbent upon the
11 appraiser to say: If I'm going to rely upon
12 something provided by management, I should do
13 the bear minimum amount of work to investigate
14 whether or not I have a reasonable basis to
15 rely on these projections. And that is a
16 situation where using both data that was
17 available leading up to the transaction and
18 this information proves that point.
19 Q. And you're confident in that point
20 that you just said, that this would be an
21 appropriate thing to do, to use this to show
22 that the trend continued?
23 A. Correct.
24 Q. Okay. And are you as confident
25 about that opinion as you are about all the

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1 - J. RUCHABER -
2 other opinions in your case?
3 A. I believe that my opinions that I
4 have made with regard to the critiques of Mr.
5 Leary are well footnoted and well supported and
6 I'll stand by them, yes.
7 Q. Not my question. I'm asking you
8 if you stand by this opinion that you just gave
9 just as much as you stand by all the other
10 opinions in your case, or are you a little
11 concerned about this one?
12 A. I'm not concerned about this one.
13 MR. PENDLETON: Objection, asked
14 and answered. You can answer it again.
15 A. And I apologize for speaking on
16 top of you.
17 Q. So you're just as comfortable
18 about this opinion as you are with the rest of
19 them in your report?
20 MR. PENDLETON: Objection, asked
21 and answered.
22 A. Yes.
23 MR. MEYERHOFF: Why don't we take
24 a lunch break.
25 MR. PENDLETON: Do you see

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1 - J. RUCHABER -
2 something I don't. They're delivering it
3 and it's supposed to be here momentarily,
4 they told me by 1:00.
5 MR. MEYERHOFF: Then let's keep
6 going.
7 MR. PENDLETON: I mean, if you
8 want me to check on it.
9 MR. MEYERHOFF: No, we'll keep
10 going. I'll use the time.
11 MR. PENDLETON: Let me just check
12 if it's in the other room. Go ahead,
13 Gary.
14 BY MR. MEYERHOFF (continuing):
15 Q. Your report, did you write every
16 word of it yourself?
17 A. No, I did not.
18 Q. Who helped you write your report?
19 A. The same people that I mentioned
20 previously who were involved in the engagement.
21 Q. People from BRG?
22 A. Yes.
23 Q. Did anybody from DLA Piper help
24 you write your report?
25 A. No.

<p style="text-align: right;">Page 222</p> <p>1 - J. RUCHABER - 2 you're saying. 3 MR. PENDLETON: Objection. 4 There's no question. 5 Q. Explain -- there is no question. 6 You do say that the DCF model 7 would have a negative value based on this 8 alone? 9 A. If you made that single adjustment 10 and with no other change in the model, that 11 assumption alone would change the value under 12 the DCF. 13 Q. And do you stand by that opinion? 14 A. That mathematically changing an 15 assumption to be lower would result in this 16 math, yes, I stand by that opinion. 17 Q. Well, now you're qualifying it. 18 A. That's what it says. 19 Q. Do you stand by the opinion that's 20 in bold at the bottom of point 3 in your 21 report? 22 A. Sure. The statement that's in 23 bold, just to be clear, does say that 24 (as read): 25 With no other changes in the</p>	<p style="text-align: right;">Page 224</p> <p>1 - J. RUCHABER - 2 might not have been available if it's a 3 full-year information that was published in a 4 report that wasn't published until the end of 5 2013, correct? 6 A. Fair enough. 7 Q. And indeed some of the sources 8 that you footnote for this information have 9 dates in your footnotes that are in 2014 and 10 2015. Correct? 11 A. Correct. 12 Q. And it's your -- is it your 13 testimony that that doesn't run afoul of the 14 ASA's position on using post-valuation data in 15 a valuation? 16 A. I think this is illustrative of 17 what everyone expected to happen. There's 18 ample evidence to suggest that the market 19 believed that rates would be going down, and 20 this is illustrative of that assumption 21 actually coming to fruition. 22 Q. So it was reasonably -- let me 23 make sure I get the standard correct. It was 24 reasonably foreseeable on -- in August 2013 25 what SilverScript's revenue would be in 2015?</p>
<p style="text-align: right;">Page 223</p> <p>1 - J. RUCHABER - 2 model, that assumption alone results in 3 losses being incurred and thereby 4 eliminates any value under the DCF model. 5 Q. Do you stand by that? 6 A. That statement? Yes, absolutely. 7 Q. Now, you include a chart on page 8 11, right? 9 A. I do. 10 Q. And this shows Mr. Leary's model, 11 two companies in the industry, and the total 12 industry trends. Correct? 13 A. Correct. 14 Q. And you include data after the 15 sale date? 16 A. Correct. 17 Q. This is post-transaction data that 18 you obtained from information that wasn't 19 available on the transaction date. Correct? 20 A. Correct. Well, some of it, yes. 21 Certainly other parts of it were available. 22 Q. All right. The stuff up to 2013 23 was available, right? 24 A. Correct. 25 Q. Well, even some of that stuff</p>	<p style="text-align: right;">Page 225</p> <p>1 - J. RUCHABER - 2 A. Not the specific numbers but 3 directionally. 4 Q. But you have specific numbers? 5 A. Correct. 6 Q. And you put points in them and you 7 show a graph that runs past 2013 and into 2015, 8 correct? 9 A. Correct. 10 Q. Are you saying that that data, the 11 data on what those companies -- well, in these 12 opinions -- withdrawn. 13 In these opinions that you're 14 giving in point 3, you're relying on that data 15 to show a trend, data past 2013, correct? 16 A. Correct. 17 Q. Now, somebody sitting in a room on 18 the date of the valuation would have no way to 19 know what those numbers are, right? 20 A. Not specifically, no. 21 Q. But you say that's within the 22 exception to the restriction of using 23 post-transaction data under ASA's position on 24 that subject? 25 A. Let's be clear. I'm not using</p>

57 (Pages 222 - 225)

<p style="text-align: right;">Page 226</p> <p>1 - J. RUCHABER -</p> <p>2 this data to render an opinion of value for a</p> <p>3 company, but I am, in fact, showing what</p> <p>4 actually happened in the industry which was</p> <p>5 reasonably anticipated and did, in fact, come</p> <p>6 to fruition.</p> <p>7 Q. So you're okay to use that data</p> <p>8 because you're not valuing the company; is that</p> <p>9 what you're saying?</p> <p>10 MR. PENDLETON: Objection to form.</p> <p>11 A. It's a graph that is for</p> <p>12 illustrative purposes and I think it's</p> <p>13 perfectly acceptable to use in this instance,</p> <p>14 yes.</p> <p>15 Q. And the reason it's perfectly</p> <p>16 acceptable is because you're not doing a</p> <p>17 valuation; is that right, and therefore you're</p> <p>18 not governed by the ASA rules?</p> <p>19 MR. PENDLETON: Objection to form.</p> <p>20 A. This graph is not used in any</p> <p>21 capacity to value the company, but it is, in</p> <p>22 fact, a chart that shows data that did come to</p> <p>23 pass that is consistent with expectations on or</p> <p>24 about that time. So, yes, I think it's</p> <p>25 appropriate to show it.</p>	<p style="text-align: right;">Page 228</p> <p>1 - J. RUCHABER -</p> <p>2 critiquing an appraisal?</p> <p>3 MR. PENDLETON: Objection, asked</p> <p>4 and answered.</p> <p>5 A. That is not the reason that I'm</p> <p>6 stating that it's okay to use this data.</p> <p>7 Q. Are you stating that it's okay to</p> <p>8 use this data because it's within the exception</p> <p>9 to the ASA rule that we looked at earlier?</p> <p>10 A. Yes.</p> <p>11 Q. So it was -- the data that you're</p> <p>12 using here was reasonably foreseeable, that's</p> <p>13 the exception that you're using?</p> <p>14 A. Not the specific numbers. But</p> <p>15 it's part of a series of discussion around what</p> <p>16 was going on in the industry, and this shows</p> <p>17 what, in fact, did come to pass which was</p> <p>18 reasonably foreseeable as of the date of</p> <p>19 valuation.</p> <p>20 Q. How did you pick the two companies</p> <p>21 that you chose to put in this chart,</p> <p>22 SilverScript and Envision?</p> <p>23 A. Those were the two with the</p> <p>24 highest percentage of LIS members and generally</p> <p>25 considered the market leaders in that space.</p>
<p style="text-align: right;">Page 227</p> <p>1 - J. RUCHABER -</p> <p>2 Q. I didn't ask you whether it was</p> <p>3 appropriate to show it.</p> <p>4 A. Okay.</p> <p>5 Q. I asked you if you believe that</p> <p>6 you are not -- that you can act unfettered from</p> <p>7 the ASA rules with respect to this graph</p> <p>8 because you're not doing an appraisal, you're</p> <p>9 just critiquing an appraisal. What's your</p> <p>10 answer to that question?</p> <p>11 A. Well, my answer to that question</p> <p>12 is: I didn't speak that I was unfettered to</p> <p>13 the ASA rules, which is a generic statement and</p> <p>14 overly broad. I'm speaking to a specific rule</p> <p>15 that you're alluding to and I'm saying that,</p> <p>16 no, you're wrong.</p> <p>17 Q. Let me be more specific, then.</p> <p>18 I'm not talking about all the ASA rules. I'm</p> <p>19 talking about the ASA rule that we are focused</p> <p>20 on right here which is the use of post-</p> <p>21 transaction data.</p> <p>22 A. Um-hmm.</p> <p>23 Q. My question is: Is it your view</p> <p>24 that you are entitled to use that data because</p> <p>25 instead of providing an appraisal, you're</p>	<p style="text-align: right;">Page 229</p> <p>1 - J. RUCHABER -</p> <p>2 Q. And SilverScript is the one whose</p> <p>3 revenues were declining significantly, right,</p> <p>4 as compared to Envision?</p> <p>5 A. Correct.</p> <p>6 Q. Was SilverScript under sanctions</p> <p>7 from CMS during that period?</p> <p>8 A. I'm not sure if it was or was not.</p> <p>9 Q. Wasn't that the reason why its</p> <p>10 revenues were decreasing, because it was</p> <p>11 sanctioned just like Smart was?</p> <p>12 A. I don't know if that's the case or</p> <p>13 not.</p> <p>14 Q. So you didn't investigate to see</p> <p>15 whether there were any other reasons why</p> <p>16 SilverScript's revenues might have been</p> <p>17 depressed?</p> <p>18 A. Only to the extent that it's</p> <p>19 referenced here in my report.</p> <p>20 Q. If it turned out that that was a</p> <p>21 reason why SilverScript's revenues went down,</p> <p>22 would you still be comfortable with using it as</p> <p>23 an example in this chart?</p> <p>24 A. To the extent that it would</p> <p>25 suggest that in order to maintain LIS</p>

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<p style="text-align: right;">Page 230</p> <p>1 - J. RUCHABER -</p> <p>2 enrollment, you don't have to decrease revenue</p> <p>3 and that's what the entire industry was doing</p> <p>4 and there's some reason to believe I could</p> <p>5 adjust that, then perhaps I would want to</p> <p>6 remove that.</p> <p>7 Q. SilverScript is a big market</p> <p>8 player, right?</p> <p>9 A. Um-hmm.</p> <p>10 Q. Yes?</p> <p>11 A. My apologies, I was drinking.</p> <p>12 Yes.</p> <p>13 Q. So is it possible -- let's just</p> <p>14 assume for a moment that it was under</p> <p>15 sanctions. And I think when you check, you'll</p> <p>16 find out that it was.</p> <p>17 MR. PENDLETON: Objection to form.</p> <p>18 Q. I'll rephrase my question.</p> <p>19 Is it fair to say that that would</p> <p>20 have -- the fact that SilverScript, one of the</p> <p>21 largest market players, was under sanctions and</p> <p>22 losing revenue, that that would have an impact</p> <p>23 on the overall industry's revenue?</p> <p>24 MR. PENDLETON: Are you</p> <p>25 representing that that was, in fact, the</p>	<p style="text-align: right;">Page 232</p> <p>1 - J. RUCHABER -</p> <p>2 are competitive bids amounts. The national</p> <p>3 average bid amount is going down and has in</p> <p>4 every single years essentially since the --</p> <p>5 it's not shown here, but since the beginning of</p> <p>6 the Part D program.</p> <p>7 Those are competitive bids. So</p> <p>8 one party being under sanction, the other</p> <p>9 parties that are bidding still have to have</p> <p>10 bids in order to get the LIS auto enrollees</p> <p>11 that are essentially forced to be low. That's</p> <p>12 part of the design of the program.</p> <p>13 So even with SilverScript under</p> <p>14 sanction, it could still very well be the case</p> <p>15 that other market participants acting together</p> <p>16 would force the dollars down in an attempt to</p> <p>17 gain that market share that SilverScript was</p> <p>18 losing.</p> <p>19 Q. That could be the case, right?</p> <p>20 A. It could be the case.</p> <p>21 Q. You didn't investigate that,</p> <p>22 though?</p> <p>23 A. No, but that's what you were</p> <p>24 asking me, to make a spurious or a statistical</p> <p>25 reference to the causation being one or the</p>
<p style="text-align: right;">Page 231</p> <p>1 - J. RUCHABER -</p> <p>2 case?</p> <p>3 MR. MEYERHOFF: That SilverScript</p> <p>4 was under sanctions?</p> <p>5 MR. PENDLETON: At that time.</p> <p>6 MR. MEYERHOFF: Yes.</p> <p>7 BY MR. MEYERHOFF (continuing):</p> <p>8 Q. But that's not my question. My</p> <p>9 question isn't based on a representation. I'm</p> <p>10 saying I'd like you to assume for a moment that</p> <p>11 SilverScript was under -- withdrawn.</p> <p>12 I have a different question. Do</p> <p>13 you know what market share SilverScript had?</p> <p>14 A. Off the top of my head, no. But</p> <p>15 we did look that up, yes.</p> <p>16 Q. Fair to say that SilverScript's</p> <p>17 revenues going down, as you present them in</p> <p>18 this chart, had an impact on the overall</p> <p>19 industry's revenues going down?</p> <p>20 A. Well, hold on. I think that's a</p> <p>21 mischaracterization of the data, and I think</p> <p>22 you could be referring to something that is</p> <p>23 auto correlated.</p> <p>24 These are dollars per member. So</p> <p>25 when the market as a whole is going down, these</p>	<p style="text-align: right;">Page 233</p> <p>1 - J. RUCHABER -</p> <p>2 other. And I'm saying there's a lot of reasons</p> <p>3 why they might not be true.</p> <p>4 Q. And my next question is: You</p> <p>5 didn't investigate that, did you?</p> <p>6 A. No, sir.</p> <p>7 Q. Were you in the room at the</p> <p>8 deposition of Mr. Leary when he talked about</p> <p>9 how patents were expiring with respect to</p> <p>10 statin drugs like Lipitor?</p> <p>11 A. I was.</p> <p>12 Q. Did you consider that when you</p> <p>13 analyzed the trend in revenues or LIS bids?</p> <p>14 A. I did not.</p> <p>15 Q. Do you know whether that was a</p> <p>16 onetime event, the fact that this group of</p> <p>17 patents that was a large portion of the</p> <p>18 pharmaceuticals that were being used were</p> <p>19 coming off patent and a lot of generics were</p> <p>20 coming in?</p> <p>21 MR. PENDLETON: Objection to form,</p> <p>22 foundation.</p> <p>23 A. So I have some knowledge about</p> <p>24 that. But the extent to which it's</p> <p>25 specifically impacting these prices, I do not.</p>

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<p style="text-align: right;">Page 234</p> <p>1 - J. RUCHABER -</p> <p>2 Q. Do you know what percentage of the</p> <p>3 revenues in the industry are made on statins?</p> <p>4 A. I do not.</p> <p>5 Q. Do you know whether it's higher</p> <p>6 than 5 percent or 10 percent?</p> <p>7 A. I do not.</p> <p>8 MR. MEYERHOFF: Why don't we take</p> <p>9 a break.</p> <p>10 THE WITNESS: I was going to ask</p> <p>11 the same thing.</p> <p>12 VIDEO TECHNICIAN: Off the record</p> <p>13 3:03 p.m. This is the end of Disk 4 in</p> <p>14 the deposition of Jason Ruchaber.</p> <p>15 (Recess taken.)</p> <p>16 VIDEO TECHNICIAN: Going back on</p> <p>17 the record 3:22 p.m. This is the</p> <p>18 beginning of Disk 5 of the deposition of</p> <p>19 Jason Ruchaber.</p> <p>20 BY MR. MEYERHOFF (continuing):</p> <p>21 Q. Mr. Ruchaber, going back to the</p> <p>22 question that we had a fight about, my question</p> <p>23 is: Between the time that you were first given</p> <p>24 instructions as to the scope of your work by</p> <p>25 Mr. Pendleton and the time you gave him the</p>	<p style="text-align: right;">Page 236</p> <p>1 - J. RUCHABER -</p> <p>2 MR. PENDLETON: Objection to form.</p> <p>3 A. I don't have a basis for stating</p> <p>4 that. It's possible but I don't know if it's,</p> <p>5 in fact, the case.</p> <p>6 Q. Can you think of a reason why ESI</p> <p>7 would pay more than it had to in August of 2013</p> <p>8 for the Smart company?</p> <p>9 MR. PENDLETON: Objection to form.</p> <p>10 A. I don't think in any circumstance</p> <p>11 somebody would pay more than they had to.</p> <p>12 Q. Right. And yet when given the</p> <p>13 trends that you spot in the market, your</p> <p>14 conclusion is that the discounted cash flow</p> <p>15 model for this company would have a negative</p> <p>16 value, correct?</p> <p>17 A. Not correct.</p> <p>18 MR. PENDLETON: Objection to form.</p> <p>19 Q. Don't you give multiple opinions</p> <p>20 in your report where you say that if the inputs</p> <p>21 you put into a discounted cash flow were</p> <p>22 adjusted to reflect the market trends that you</p> <p>23 saw, that those moves alone would result in a</p> <p>24 discounted cash flow that was a negative</p> <p>25 number?</p>
<p style="text-align: right;">Page 235</p> <p>1 - J. RUCHABER -</p> <p>2 first draft of your report, did you have any</p> <p>3 communications with Mr. Pendleton or anyone</p> <p>4 from his team in which you got different</p> <p>5 assumptions to rely on than the ones you had</p> <p>6 previously received from them?</p> <p>7 A. No, not to my knowledge.</p> <p>8 Q. So, Mr. Ruchaber, in August of</p> <p>9 2013, ESI agreed to pay \$14.5 million for Smart</p> <p>10 subject to a true-up adjustment at the end of</p> <p>11 the year, correct?</p> <p>12 A. That's my understanding, yes.</p> <p>13 Q. All right. And at that time Smart</p> <p>14 was under compulsion to sell?</p> <p>15 A. Yes.</p> <p>16 Q. And fair to say it was a</p> <p>17 restricted market?</p> <p>18 MR. PENDLETON: Objection, asked</p> <p>19 and answered.</p> <p>20 A. Yes.</p> <p>21 Q. Is it fair to assume that ESI</p> <p>22 considered the fair market value of Smart at</p> <p>23 that time to be higher than what it was paying,</p> <p>24 given that Smart was under compulsion to sell</p> <p>25 and it was a restricted market?</p>	<p style="text-align: right;">Page 237</p> <p>1 - J. RUCHABER -</p> <p>2 A. Well, but, again, it's in</p> <p>3 isolation so we're doing step-wise analysis,</p> <p>4 right? We're taking a look at an analysis that</p> <p>5 has multiple variables in it and reviewing each</p> <p>6 assumption and trying to estimate the impact</p> <p>7 that single assumption would have were it to be</p> <p>8 changed.</p> <p>9 Q. So let's just talk about the one</p> <p>10 that we've been discussing, revenue.</p> <p>11 A. Um-hmm.</p> <p>12 Q. According to you, revenue was</p> <p>13 going down and if you put the inputs into the</p> <p>14 DCF that reflect the way in which you thought</p> <p>15 revenue would go down, the DCF model would be a</p> <p>16 negative number, correct?</p> <p>17 MR. PENDLETON: Objection to form.</p> <p>18 A. Incorrect.</p> <p>19 MR. PENDLETON: Mischaracterizes.</p> <p>20 Q. Did ESI make a multimillion dollar</p> <p>21 mistake in August of 2013 in paying for the</p> <p>22 Smart assets a number that was north of</p> <p>23 \$10 million?</p> <p>24 MR. PENDLETON: Objection to form.</p> <p>25 A. I don't have an opinion on that.</p>

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<p style="text-align: right;">Page 238</p> <p>1 - J. RUCHABER -</p> <p>2 Q. Because you're not offering a</p> <p>3 valuation for Smart at any time, are you?</p> <p>4 A. Well, the reason I don't have an</p> <p>5 opinion on that is because I don't know if they</p> <p>6 made a mistake or not.</p> <p>7 Q. But you aren't offering a</p> <p>8 valuation opinion on what Smart was worth in</p> <p>9 August of 2013?</p> <p>10 A. I am not. No, sir.</p> <p>11 Q. If you were hired by Express</p> <p>12 Scripts in August 2013 to do a valuation of</p> <p>13 Smart, based on what you know, would you advise</p> <p>14 them to purchase the company or not purchase</p> <p>15 the company?</p> <p>16 MR. PENDLETON: Objection to form,</p> <p>17 beyond the scope.</p> <p>18 A. I don't have sufficient</p> <p>19 information regarding their strategic</p> <p>20 motivations or other things, facts and</p> <p>21 circumstances, so I can't answer that question.</p> <p>22 Q. If the DCF model is your mode for</p> <p>23 valuing the company and you end up with a</p> <p>24 negative value, that means the company's going</p> <p>25 to lose money, right?</p>	<p style="text-align: right;">Page 240</p> <p>1 - J. RUCHABER -</p> <p>2 that would also result in a DCF model with a</p> <p>3 negative number?</p> <p>4 A. Correct.</p> <p>5 Q. So you're predicting two trends in</p> <p>6 the industry that would render Smart -- a DCF</p> <p>7 of Smart worth less than zero, on both the</p> <p>8 revenue side and the cost side?</p> <p>9 MR. PENDLETON: Objection to form.</p> <p>10 A. I'm not suggesting it renders</p> <p>11 Smart less than zero. I'm suggesting that</p> <p>12 mathematically it renders the value yielded by</p> <p>13 the DCF less than zero.</p> <p>14 Q. Let's take a step back and talk</p> <p>15 not about how it would affect the DCF model of</p> <p>16 Mr. Leary, but let's talk about how it would</p> <p>17 affect the industry.</p> <p>18 Isn't it true that if you're</p> <p>19 correct that expenses were trending up and that</p> <p>20 revenues were not only trending down in</p> <p>21 percentage growth but were actually being</p> <p>22 reduced, that, if taken to their natural</p> <p>23 conclusion, the whole industry would have</p> <p>24 collapsed; isn't that right?</p> <p>25 MR. PENDLETON: Objection to form.</p>
<p style="text-align: right;">Page 239</p> <p>1 - J. RUCHABER -</p> <p>2 A. It does.</p> <p>3 Q. So based on your opinion in just</p> <p>4 point number 3 and the DCF model that would be</p> <p>5 obtained, if you follow your opinions in point</p> <p>6 number 3, it would be your opinion that if</p> <p>7 Express Scripts was offered Smart for free,</p> <p>8 they shouldn't take it because they'd end up</p> <p>9 losing money; isn't that right?</p> <p>10 MR. PENDLETON: Objection to form.</p> <p>11 A. No, that's not right.</p> <p>12 Q. Let's look at point number 4. In</p> <p>13 point number 4 you critique Mr. Leary's work</p> <p>14 because, in your view, expenses in this</p> <p>15 industry would grow at a rate higher than 3</p> <p>16 percent. Fair to say?</p> <p>17 A. Based on the information that's</p> <p>18 available regarding expenses, it's my opinion</p> <p>19 that that data suggest a higher growth rate.</p> <p>20 Q. In expenses?</p> <p>21 A. Expenses, correct.</p> <p>22 Q. And in point number 4, you</p> <p>23 similarly give an opinion at the end of it,</p> <p>24 page 13, that if Mr. Leary's model was adjusted</p> <p>25 to comport with the trend as you describe it,</p>	<p style="text-align: right;">Page 241</p> <p>1 - J. RUCHABER -</p> <p>2 A. Well, not the whole industry but</p> <p>3 certainly SmartD is a difficult business to be</p> <p>4 in, and there are many plans that have gone out</p> <p>5 of business and don't make money.</p> <p>6 MR. PENDLETON: Did you mean</p> <p>7 Medicare Part D?</p> <p>8 A. Medicare Part D, excuse me.</p> <p>9 Q. But these industry trends aren't</p> <p>10 SmartD trends; this is an industry trend for</p> <p>11 SilverScript. SilverScript's trending down and</p> <p>12 its expenses are trending up. How could it</p> <p>13 deal with these industry trends on both sides,</p> <p>14 as you project them, without falling apart?</p> <p>15 A. Well, they may not.</p> <p>16 Q. So you agree that the natural</p> <p>17 consequence of the trends that you predict is</p> <p>18 that no company in the industry could be</p> <p>19 profitable in the long term because revenues</p> <p>20 would continue to go down and expenses would</p> <p>21 continue to go up?</p> <p>22 A. So I don't predict these trends,</p> <p>23 for the record. I'm referencing data that's</p> <p>24 publicly available in the marketplace from CMS,</p> <p>25 from MedPAC and from other highly trusted</p>

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<p style="text-align: right;">Page 242</p> <p>1 - J. RUCHABER -</p> <p>2 sources that are doing statistical analyses and</p> <p>3 actuarial studies on this information.</p> <p>4 So it is just a fact that is</p> <p>5 what's being projected by stakeholders in this</p> <p>6 industry.</p> <p>7 Q. By the sources that you cite in</p> <p>8 your opinions, right?</p> <p>9 A. Those cited by Mr. Leary and those</p> <p>10 that I have additionally referenced in my</p> <p>11 opinion, yes.</p> <p>12 Q. And it's your conclusion from</p> <p>13 those sources and the way you interpret them</p> <p>14 and the way that you interpret the trends</p> <p>15 implied by them that this industry is headed</p> <p>16 for cataclysm; isn't that right?</p> <p>17 MR. PENDLETON: Objection to form.</p> <p>18 A. That is not what I'm saying.</p> <p>19 Q. But how could any company survive</p> <p>20 under these conditions? Put Smart aside.</p> <p>21 A. Sure. Do I have some leeway to</p> <p>22 answer that question?</p> <p>23 Q. Please do.</p> <p>24 A. All right. So, again, based on</p> <p>25 information that I've referenced about trends</p>	<p style="text-align: right;">Page 244</p> <p>1 - J. RUCHABER -</p> <p>2 there's a high probability that you will not</p> <p>3 make money.</p> <p>4 Q. Okay. Not really what I was</p> <p>5 looking for so let me ask a more specific</p> <p>6 question. Let's forget about Smart and small</p> <p>7 standalone businesses.</p> <p>8 A. Sure.</p> <p>9 Q. Explain to me how Express Scripts'</p> <p>10 Medicare Part D plan and SilverScript's</p> <p>11 Medicare Part D plan could survive if the</p> <p>12 expenses are trending up in the way you</p> <p>13 describe and revenues are drying up. Explain</p> <p>14 to me.</p> <p>15 MR. PENDLETON: Objection to the</p> <p>16 form.</p> <p>17 A. Explain to you how that could come</p> <p>18 to pass?</p> <p>19 Q. How those entities could</p> <p>20 survive --</p> <p>21 A. Sure.</p> <p>22 Q. -- based on the trends that you</p> <p>23 predict in applying them to Smart.</p> <p>24 A. Once again, I don't predict these</p> <p>25 trends. I reference trends that have been</p>
<p style="text-align: right;">Page 243</p> <p>1 - J. RUCHABER -</p> <p>2 in the marketplace, it is apparent that being a</p> <p>3 small standalone Medicare Part D business,</p> <p>4 particularly one that is heavy in LIS members,</p> <p>5 is a very difficult business to be in. Many of</p> <p>6 them have gone out of business. Part D plans,</p> <p>7 since the inception of the program in 2006,</p> <p>8 three out of four have gone out of business.</p> <p>9 Industry data that I have</p> <p>10 referenced in my report suggests that on a</p> <p>11 standalone basis, it's nearly impossible to</p> <p>12 make a profit given the limited amount of</p> <p>13 statutory profit you're allowed to make based</p> <p>14 on the structure and design of Medicare Part D.</p> <p>15 So what that suggests is that this</p> <p>16 is a loss leader for a more comprehensive suite</p> <p>17 of products; or you need to have enhanced</p> <p>18 members, non-auto enrollee members that elect</p> <p>19 to pay for a plan that's not below the national</p> <p>20 bid amount. You need to have a better mix of</p> <p>21 product.</p> <p>22 It doesn't mean the industry's</p> <p>23 heading for cataclysm. It simply means that on</p> <p>24 a standalone basis, it's a very difficult</p> <p>25 business to be in. And barring something else,</p>	<p style="text-align: right;">Page 245</p> <p>1 - J. RUCHABER -</p> <p>2 predicted by others.</p> <p>3 Q. I misspoke. The trends that</p> <p>4 you've interpreted from the resources that</p> <p>5 you've looked at.</p> <p>6 A. I didn't interpret the trends.</p> <p>7 Q. Oh, sir, you did.</p> <p>8 A. No, they are actually calculated,</p> <p>9 presented, many of them in tabular format, that</p> <p>10 show the actual percentages that the market</p> <p>11 projects will be there for revenue and for</p> <p>12 expense. All I've done is said: Based on</p> <p>13 market data presented in specific documents,</p> <p>14 this would suggest that revenues are declining.</p> <p>15 I have graphical evidence of that.</p> <p>16 Q. We'll play this game at trial.</p> <p>17 We'll move on now.</p> <p>18 A. Okay.</p> <p>19 Q. In connection with the valuation</p> <p>20 that you did in the one group of transactions</p> <p>21 you can recall that involved an insurance</p> <p>22 company, do you recall whether you predicted</p> <p>23 trends in the industry in determining the value</p> <p>24 of those companies at that time?</p> <p>25 A. I didn't predict any trends. I</p>

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<p style="text-align: right;">Page 310</p> <p>1 - J. RUCHABER -</p> <p>2 structure, the ideal capital structure?</p> <p>3 MR. PENDLETON: Objection to form.</p> <p>4 A. I don't know, without doing the</p> <p>5 analysis, and Mr. Leary has presented no</p> <p>6 arguments to the affirmative that this is an</p> <p>7 appropriate capital structure to use for Smart.</p> <p>8 Q. Are you familiar with any Part D</p> <p>9 plans that maintain a capital structure based</p> <p>10 entirely on equity with no debt?</p> <p>11 MR. PENDLETON: Standalone</p> <p>12 Medicare Part D plan?</p> <p>13 Q. Any.</p> <p>14 A. I don't think that information is</p> <p>15 available.</p> <p>16 Q. So you're not familiar with that?</p> <p>17 A. No.</p> <p>18 Q. Are you familiar with the concept</p> <p>19 Mr. Leary talked about yesterday of using</p> <p>20 surplus notes as a way to obtain debt financing</p> <p>21 if you're an insurance company, notes secured</p> <p>22 by cash on the balance sheet?</p> <p>23 A. I am generally familiar with that.</p> <p>24 Q. Have you ever dealt with that</p> <p>25 concept in your work experience in any</p>	<p style="text-align: right;">Page 312</p> <p>1 - J. RUCHABER -</p> <p>2 subset of the total assumption critiques that I</p> <p>3 had included in my report.</p> <p>4 Q. And with all that, the numbers you</p> <p>5 came out with are 17.9 million to 19.9 million.</p> <p>6 Correct?</p> <p>7 A. That's what's shown in the</p> <p>8 exhibits, yes.</p> <p>9 Q. Can we call it 18 to 20 million</p> <p>10 for shorthand? Will you know what I'm talking</p> <p>11 about?</p> <p>12 A. Sure.</p> <p>13 Q. And as you say, you reached those</p> <p>14 numbers by applying some but not all of your</p> <p>15 opinions on why Mr. Leary's discounted cash</p> <p>16 flow model is problematic, correct?</p> <p>17 A. Correct.</p> <p>18 Q. So you applied some of them, and</p> <p>19 some of the other opinions that you have in</p> <p>20 your report weren't applied in that analysis,</p> <p>21 correct?</p> <p>22 A. Correct.</p> <p>23 Q. For example, you didn't charge</p> <p>24 Smart for increased PBM expenses in the later</p> <p>25 years, right?</p>
<p style="text-align: right;">Page 311</p> <p>1 - J. RUCHABER -</p> <p>2 capacity?</p> <p>3 A. No, I have not.</p> <p>4 Q. So if it was true that Smart could</p> <p>5 get financing secured by cash on the balance</p> <p>6 sheet, would that change your opinion about</p> <p>7 whether or not a debt component should be</p> <p>8 included in the WACC?</p> <p>9 A. It may.</p> <p>10 Q. Now, you include a series of</p> <p>11 charts in your report as exhibits. Correct?</p> <p>12 A. A series of charts?</p> <p>13 Q. Yeah, with data in it. You did</p> <p>14 some adjustments to Mr. Leary's exhibits.</p> <p>15 A. Sure, yeah.</p> <p>16 Q. And you adjusted, in certain ways,</p> <p>17 Mr. Leary's inputs to the discounted cash flow</p> <p>18 model and came out with different numbers,</p> <p>19 correct?</p> <p>20 A. Correct.</p> <p>21 Q. And the numbers that you came out</p> <p>22 with show a range of value for Smart of</p> <p>23 17.9 million to \$19.9 million?</p> <p>24 A. Well, using the assumptions that</p> <p>25 I've set in the model, which is a very small</p>	<p style="text-align: right;">Page 313</p> <p>1 - J. RUCHABER -</p> <p>2 A. I did not.</p> <p>3 Q. That's one of the opinions you had</p> <p>4 in your report that you stand by, but it's not</p> <p>5 in your numbers, right?</p> <p>6 A. Correct.</p> <p>7 Q. Did you do a calculation of how</p> <p>8 far into the negative numbers your DCF model</p> <p>9 would go if you relied on all of your opinions</p> <p>10 critiquing Mr. Leary's model?</p> <p>11 A. His model falls apart.</p> <p>12 Q. Well, you could see how you could</p> <p>13 come up with a negative number, right?</p> <p>14 A. Well, but that's not how a DCF</p> <p>15 model works. If a company's nonviable and the</p> <p>16 assumptions don't support a viable business,</p> <p>17 there would be no point in doing a DCF model.</p> <p>18 Q. That could be done, though,</p> <p>19 mathematically, right?</p> <p>20 A. It could.</p> <p>21 Q. You chose not to do it?</p> <p>22 A. Correct.</p> <p>23 Q. Even though you're not abandoning</p> <p>24 any of your opinions, correct?</p> <p>25 A. Correct.</p>

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<p style="text-align: right;">Page 314</p> <p>1 - J. RUCHABER -</p> <p>2 Q. Don't you want to know how big a</p> <p>3 loss it would have been for someone to purchase</p> <p>4 Smart's assets as of August 2013 based on all</p> <p>5 your opinions?</p> <p>6 A. No.</p> <p>7 Q. You don't even have any</p> <p>8 intellectual curiosity about that?</p> <p>9 A. No.</p> <p>10 Q. Once it dips below zero, that's</p> <p>11 it; is that right?</p> <p>12 A. No, that's not right. The</p> <p>13 totality of my rebuttal is: Are the opinions</p> <p>14 proffered by Mr. Leary supported by evidence,</p> <p>15 to which they are not.</p> <p>16 Q. Do you intend to offer these</p> <p>17 adjusted exhibits into evidence at trial and</p> <p>18 explain what you did in them?</p> <p>19 MR. PENDLETON: Objection.</p> <p>20 Q. As your opinions?</p> <p>21 MR. PENDLETON: Don't answer the</p> <p>22 question, calls for attorney-client</p> <p>23 privilege.</p> <p>24 Q. Do you intend to offer an opinion</p> <p>25 that, based on these adjustments, the value of</p>	<p style="text-align: right;">Page 316</p> <p>1 - J. RUCHABER -</p> <p>2 VIDEO TECHNICIAN: Off the record</p> <p>3 at 4:52 p.m.</p> <p>4 (Recess taken.)</p> <p>5 VIDEO TECHNICIAN: Back on the</p> <p>6 record 5:03 p.m.</p> <p>7 BY MR. MEYERHOFF (continuing):</p> <p>8 Q. Mr. Ruchaber, in your report on</p> <p>9 page 20, in the Summary of Observations, you</p> <p>10 discuss the adjustments that you've made and</p> <p>11 you say that the impact of those adjustments,</p> <p>12 the indicated value under Mr. Leary's DCF model</p> <p>13 was 18.84 million. See that?</p> <p>14 A. I to.</p> <p>15 Q. Do you intend to offer that as an</p> <p>16 opinion of yours at trial?</p> <p>17 MR. PENDLETON: I'm going to just</p> <p>18 object to the question. I'm going to</p> <p>19 allow him to answer it. To the extent</p> <p>20 that it calls for attorney work product</p> <p>21 and what the intention at trial is, first</p> <p>22 of all, I don't know that he can answer</p> <p>23 that. But he can answer the question to</p> <p>24 the extent he has any such knowledge</p> <p>25 about what will happen at trial.</p>
<p style="text-align: right;">Page 315</p> <p>1 - J. RUCHABER -</p> <p>2 Smart would be between 18 and \$20 million?</p> <p>3 MR. PENDLETON: Same objection.</p> <p>4 Next question.</p> <p>5 MR. MEYERHOFF: You're instructing</p> <p>6 him not to answer that question?</p> <p>7 MR. PENDLETON: Yes.</p> <p>8 MR. MEYERHOFF: I don't get to</p> <p>9 know whether he's going to offer an</p> <p>10 opinion on the exhibits to his report?</p> <p>11 MR. PENDLETON: It's part of his</p> <p>12 report and that's what his opinion is</p> <p>13 based on. So he will testify about his</p> <p>14 report.</p> <p>15 MR. MEYERHOFF: You're really</p> <p>16 going to instruct him not to answer that</p> <p>17 question?</p> <p>18 MR. PENDLETON: Well, you're</p> <p>19 asking him --</p> <p>20 MR. MEYERHOFF: We're going to be</p> <p>21 back here because I'm not going to call</p> <p>22 the judge now. We're going to be back</p> <p>23 here. That's a huge mistake.</p> <p>24 MR. PENDLETON: Why don't we take</p> <p>25 a break. It's 5:00. How much longer?</p>	<p style="text-align: right;">Page 317</p> <p>1 - J. RUCHABER -</p> <p>2 MR. MEYERHOFF: So you allowed him</p> <p>3 to answer 50 questions I've asked exactly</p> <p>4 the same way about what he intends to</p> <p>5 offer as opinions, and you're not going</p> <p>6 to let him answer this one? Are you</p> <p>7 going to let him answer the question? We</p> <p>8 don't have to debate it if he's going to</p> <p>9 answer the question.</p> <p>10 MR. PENDLETON: Let me respond.</p> <p>11 You asked him questions about opinions</p> <p>12 that are not in his report, and he told</p> <p>13 you he didn't intend to offer any</p> <p>14 opinions beyond his report.</p> <p>15 Now you're asking him if he</p> <p>16 intends to offer the opinions that are</p> <p>17 set forth in his report. He can answer</p> <p>18 the question subject to my prior</p> <p>19 objection.</p> <p>20 MR. MEYERHOFF: Do you need the</p> <p>21 question read back?</p> <p>22 THE WITNESS: If you would,</p> <p>23 please.</p> <p>24 (Requested portion read.)</p> <p>25 A. To the extent that I am asked what</p>

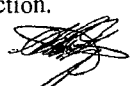
80 (Pages 314 - 317)

<p style="text-align: right;">Page 318</p> <p>1 - J. RUCHABER -</p> <p>2 the impact of those changes would be to</p> <p>3 Mr. Leary's opinion or his model, then, yes, I</p> <p>4 would answer in the affirmative at trial.</p> <p>5 Q. You agree that those numbers</p> <p>6 ignore many of the opinions that you set forth</p> <p>7 in your report, correct?</p> <p>8 MR. PENDLETON: Objection, asked</p> <p>9 and answered.</p> <p>10 A. It doesn't ignore them. It simply</p> <p>11 presents a subset of them.</p> <p>12 Q. It doesn't include an adjustment</p> <p>13 for valuing Smart as anything other than a</p> <p>14 going concern, correct?</p> <p>15 A. Correct.</p> <p>16 Q. It doesn't include your criticisms</p> <p>17 of using Smart's management projections for</p> <p>18 revenue for the second half of 2013. No</p> <p>19 adjustment for that, right?</p> <p>20 A. Correct.</p> <p>21 Q. And with respect to the claims</p> <p>22 expense projections, you don't raise expenses</p> <p>23 to comport with the trend that you discussed in</p> <p>24 your report, correct?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 320</p> <p>1 - J. RUCHABER -</p> <p>2 to reach \$18.84 million, in your opinion, rest</p> <p>3 on principles and methods that you believe to</p> <p>4 be reliable?</p> <p>5 MR. PENDLETON: Objection, form.</p> <p>6 A. I'm not exactly sure how to answer</p> <p>7 that question because it's a broad question.</p> <p>8 Q. It's actually the question that</p> <p>9 determines whether or not you're allowed to</p> <p>10 express an expert opinion in Federal Court. So</p> <p>11 my question is -- well, I'll ask it a different</p> <p>12 way.</p> <p>13 MR. PENDLETON: Objection to the</p> <p>14 characterization. Can you please ask the</p> <p>15 next question.</p> <p>16 Q. I'll ask it a different way.</p> <p>17 Would you agree with me that you,</p> <p>18 yourself, don't believe that a DCF model that</p> <p>19 ignores the list of factors that I just read to</p> <p>20 you that you conceded were not included in the</p> <p>21 analysis that got to 18.84 million couldn't be</p> <p>22 an analysis that rests on reliable principles</p> <p>23 and methods?</p> <p>24 MR. PENDLETON: Objection to form.</p> <p>25 A. I don't agree with that statement.</p>
<p style="text-align: right;">Page 319</p> <p>1 - J. RUCHABER -</p> <p>2 Q. And you don't include, in that</p> <p>3 \$18.84 million analysis, that the projected PBM</p> <p>4 fees could increase?</p> <p>5 A. Correct.</p> <p>6 Q. Do you change the beta that</p> <p>7 Mr. Leary used other than to correct the --</p> <p>8 well, withdrawn.</p> <p>9 You don't account for this</p> <p>10 relationship issues with RxAlly or Walgreen's</p> <p>11 that you cite in your report in the</p> <p>12 \$18.84 million number, correct?</p> <p>13 A. Correct.</p> <p>14 Q. Is it your opinion, nonetheless,</p> <p>15 that the number \$18.84 million that's set forth</p> <p>16 at the end of your adjusted analysis is the</p> <p>17 product of reliable principles and methods?</p> <p>18 MR. PENDLETON: Objection to form.</p> <p>19 You're mischaracterizing what the</p> <p>20 18.84 million is. You can answer the</p> <p>21 question.</p> <p>22 A. I'm not sure I understand the</p> <p>23 question. When you say -- can you rephrase it,</p> <p>24 please.</p> <p>25 Q. Does the calculation that you did</p>	<p style="text-align: right;">Page 321</p> <p>1 - J. RUCHABER -</p> <p>2 Q. How is it possible that your</p> <p>3 \$18.84 million analysis could rest on reliable</p> <p>4 principles and methods when you criticize</p> <p>5 multiple principles and methods on which that</p> <p>6 calculation is based?</p> <p>7 MR. PENDLETON: Objection to form.</p> <p>8 A. What this number represents is</p> <p>9 simply taking Mr. Leary's DCF method and</p> <p>10 changing two assumptions. Those two</p> <p>11 assumptions which I've explained, one in its</p> <p>12 entirety, and one I use a lesser assumption.</p> <p>13 But it elucidates the high sensitivity to</p> <p>14 changes in the underlying assumptions, and</p> <p>15 making very conservative changes to those</p> <p>16 assumptions' results under his model, a</p> <p>17 reduction in value to \$18.84 million.</p> <p>18 Q. I understand what you did. Simple</p> <p>19 question and if you can't answer my question,</p> <p>20 that's a good answer, as long as it's the</p> <p>21 truth.</p> <p>22 Can you explain to me whether or</p> <p>23 not the analysis that you conducted that led to</p> <p>24 the \$18.84 million number rests on -- I'm</p> <p>25 sorry, is the product of reliable principles</p>

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<p style="text-align: right;">Page 330</p> <p>1 - J. RUCHABER -</p> <p>2 I would explain to them why it's not applicable</p> <p>3 to that particular entity.</p> <p>4 Q. You wouldn't hide it from your</p> <p>5 client, right?</p> <p>6 A. No.</p> <p>7 Q. Why did you do an adjusted</p> <p>8 analysis for the comparable companies and</p> <p>9 comparable transactions tests using some of the</p> <p>10 changes that you would advocate in your</p> <p>11 opinions on those tests?</p> <p>12 A. When you say "adjustment using</p> <p>13 some of the changes," what are you referring</p> <p>14 to?</p> <p>15 Q. I'm referring to page 11 of 19 of</p> <p>16 the exhibits to your report.</p> <p>17 A. Okay.</p> <p>18 Q. Here you have not only a</p> <p>19 discounted cash flow method that gives the</p> <p>20 range seventeen nine to nineteen nine and a</p> <p>21 midpoint of 18.84, but you also have numbers</p> <p>22 for an adjusted guideline company method and</p> <p>23 adjusted guideline transaction method.</p> <p>24 Correct?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 332</p> <p>1 - J. RUCHABER -</p> <p>2 under the market approach or market approaches.</p> <p>3 Q. With respect to those -- bear with</p> <p>4 me for one second.</p> <p>5 Is it your opinion that those</p> <p>6 numbers, the numbers that are set -- that you</p> <p>7 discuss in the text of your report and are set</p> <p>8 forth on page 11 of 19 for the two market</p> <p>9 approaches, that those are numbers that are the</p> <p>10 product of reliable principles and methods?</p> <p>11 MR. PENDLETON: Objection to form.</p> <p>12 A. Again, I've made adjustments to</p> <p>13 Mr. Leary's model so I'm using his valuation</p> <p>14 methods. I'm simply making an adjustment to</p> <p>15 the multiple to reflect the things that I've</p> <p>16 stated in my report.</p> <p>17 Q. After concluding that they</p> <p>18 shouldn't be used at all?</p> <p>19 A. Well, it's a multi-varied</p> <p>20 analysis, so it's -- if you take that the</p> <p>21 market approach should be used, here is a more</p> <p>22 appropriate way to use it.</p> <p>23 I would suggest it should not be</p> <p>24 used at all or at least relied upon. I would</p> <p>25 still do a market approach; I just wouldn't</p>
<p style="text-align: right;">Page 331</p> <p>1 - J. RUCHABER -</p> <p>2 Q. Even though you don't think they</p> <p>3 should bear on the valuation at all, you did</p> <p>4 this work?</p> <p>5 A. Correct.</p> <p>6 Q. Do you intend to offer opinions at</p> <p>7 trial that this -- that this range of values</p> <p>8 was the right range of values using the</p> <p>9 adjustments that you make?</p> <p>10 A. Mathematically or my opinion that</p> <p>11 that's the value of Smart?</p> <p>12 Q. Well, I assume you're not going to</p> <p>13 offer the opinion that that's the value of</p> <p>14 Smart. Right?</p> <p>15 A. Yes, correct.</p> <p>16 Q. Are you going to offer opinions at</p> <p>17 trial that use these numbers, the numbers that</p> <p>18 you divined for guideline company method and</p> <p>19 guideline transaction method?</p> <p>20 A. Though I don't know exactly what</p> <p>21 will be asked of me at trial, to the extent</p> <p>22 that there are questions regarding the market</p> <p>23 approach and the adjustments that should have</p> <p>24 been made to apply it, I would suggest that</p> <p>25 these are more appropriate ranges of value</p>	<p style="text-align: right;">Page 333</p> <p>1 - J. RUCHABER -</p> <p>2 rely upon it if I were to value a company like</p> <p>3 this.</p> <p>4 Q. I'm going to skip ahead to</p> <p>5 something else. Did you review the amendment</p> <p>6 to Mr. Leary's report?</p> <p>7 A. I did.</p> <p>8 Q. In your report you criticize</p> <p>9 Mr. Leary for double counting in the way that</p> <p>10 he -- in his separate analysis where he adds in</p> <p>11 enrollees and comes to the 13 to \$15 million</p> <p>12 range, correct?</p> <p>13 A. Correct.</p> <p>14 Q. You were at his deposition</p> <p>15 yesterday?</p> <p>16 A. I was.</p> <p>17 Q. You heard his explanation of why</p> <p>18 he did it?</p> <p>19 A. I did.</p> <p>20 Q. Do you still have that opinion</p> <p>21 that Mr. Leary's double counting?</p> <p>22 A. Absolutely.</p> <p>23 Q. Have you done any work to come to</p> <p>24 -- well, do you intend to offer opinions at</p> <p>25 trial rebutting Mr. Leary's amendment to his</p>

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<div style="display: flex; justify-content: space-between;"> <div> <p>1 INDEX</p> <p>2 EXAMINATION OF</p> <p>3 JASON L. RUCHABER</p> <p>4</p> <p>5 By Mr. Meyerhoff..... 5</p> <p>6 By Mr. Pendleton..... 360</p> <p>7 AFTERNOON SESSION..... 167</p> <p>8 REQUESTED PORTIONS MARKED [Page/Line]:</p> <p>9 14/5, 20/18, 170/5, 183/16, 218/7</p> <p>10</p> <p>11</p> <p>12 EXHIBITS</p> <p>13</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;">EXHIBIT</th> <th style="width: 70%;">DESCRIPTION</th> <th style="width: 20%;">PAGE</th> </tr> </thead> <tbody> <tr> <td>14</td> <td>Exhibit 1: Expert Report of Jason Ruchaber</td> <td>28</td> </tr> <tr> <td>15</td> <td>Exhibit 2: LinkedIn profile of Jason Ruchaber</td> <td>47</td> </tr> <tr> <td>16</td> <td>Exhibit 3: Letter 2/19/15</td> <td>152</td> </tr> <tr> <td>17</td> <td>Exhibit 4: Letter 3/28/14 (#SMT00887851-854)</td> <td>159</td> </tr> <tr> <td>18</td> <td>Exhibit 5: Presentation slides 3/19/13</td> <td>177</td> </tr> <tr> <td>19</td> <td>Exhibit 6: Excerpt from deposition of Anthony Xu 4/20/16</td> <td>184</td> </tr> <tr> <td>20</td> <td>Exhibit 7: Book excerpt The Handbook of Financing Growth, Second Edition, Kenneth Marks</td> <td>291</td> </tr> </tbody> </table> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> </div> <div> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> </div> </div>	EXHIBIT	DESCRIPTION	PAGE	14	Exhibit 1: Expert Report of Jason Ruchaber	28	15	Exhibit 2: LinkedIn profile of Jason Ruchaber	47	16	Exhibit 3: Letter 2/19/15	152	17	Exhibit 4: Letter 3/28/14 (#SMT00887851-854)	159	18	Exhibit 5: Presentation slides 3/19/13	177	19	Exhibit 6: Excerpt from deposition of Anthony Xu 4/20/16	184	20	Exhibit 7: Book excerpt The Handbook of Financing Growth, Second Edition, Kenneth Marks	291	<div style="display: flex; justify-content: space-between;"> <div> <p>1 ERRATA SHEET</p> <p>2 VERITEXT LEGAL SOLUTIONS</p> <p>3 330 OLD COUNTRY ROAD</p> <p>4 MINEOLA, NY 11501</p> <p>5 800.727.6396</p> <p>6 CASE: SMART VS. BENECARD</p> <p>7 DEPOSITION DATE: 7/8/2016</p> <p>8 DEPONENT: JASON L. RUCHABER</p> <p>9</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;">PAGE LINE(S)</th> <th style="width: 40%;">CHANGE</th> <th style="width: 50%;">REASON</th> </tr> </thead> <tbody> <tr><td>10</td><td></td><td></td></tr> <tr><td>11</td><td></td><td></td></tr> <tr><td>12</td><td></td><td></td></tr> <tr><td>13</td><td></td><td></td></tr> <tr><td>14</td><td></td><td></td></tr> <tr><td>15</td><td></td><td></td></tr> <tr><td>16</td><td></td><td></td></tr> <tr><td>17</td><td></td><td></td></tr> <tr><td>18</td><td></td><td></td></tr> <tr><td>19</td><td></td><td></td></tr> <tr><td>20</td><td></td><td></td></tr> <tr><td>21</td><td></td><td></td></tr> <tr><td>22</td><td></td><td></td></tr> <tr><td>23</td><td></td><td></td></tr> <tr><td>24</td><td></td><td></td></tr> <tr><td>25</td><td></td><td></td></tr> </tbody> </table> <p>26 JASON L. RUCHABER</p> <p>27</p> <p>28 SUBSCRIBED AND SWORN TO BEFORE ME</p> <p>29 THIS ____ DAY OF ____, 20__.</p> <p>30</p> <p>31</p> <p>32</p> <p>33</p> <p>34</p> <p>35</p> </div> <div> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> </div> </div>	PAGE LINE(S)	CHANGE	REASON	10			11			12			13			14			15			16			17			18			19			20			21			22			23			24			25		
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<div style="display: flex; justify-content: space-between;"> <div> <p>1</p> <p>2 CERTIFICATION</p> <p>3</p> <p>4 I, Sherri Flagg, a Registered</p> <p>5 Professional Reporter, Certified LiveNote</p> <p>6 Reporter, and a Notary Public, do hereby</p> <p>7 certify that the foregoing witness, JASON L.</p> <p>8 RUCHABER, was duly sworn on the date indicated</p> <p>9 and that the foregoing is a true and accurate</p> <p>10 transcription of my stenographic notes.</p> <p>11 I further certify that I am not</p> <p>12 employed by nor related to any party to this</p> <p>13 action.</p> <p>14 </p> <p>15</p> <p>16 Sherri Flagg, RPR, CLR</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> </div> <div> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> </div> </div>	<div style="display: flex; justify-content: space-between;"> <div> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> </div> <div> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> </div> </div>																																																																											

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